

**REMARKS**

Claims 1-31 and 99 are pending. Applicants respectfully request reconsideration of the above-referenced application in light of the following remarks.

Claims 1-31 and 99 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Narwankar et al. (U.S. Patent No.: 6,475,854 B2) ("854 patent"). The rejection is respectfully traversed.

Applicants note that the prior art rejection of all the pending claims, e.g., claims 1-31 and 99, is entirely predicated on the Narwankar reference. Narwankar issued as a patent on November 5, 2002. Narwankar first published on November 22, 2001 as U.S. 2002/0043453 A1. Narwankar's date of filing is December 21, 2000. Narwankar claims the benefit of provisional application no.: 60/173,928 ("928 provisional application"), filed on December 30, 1999. Thus, the earliest effective date of the Narwankar reference is December 30, 1999.

Applicants respectfully submit, however, that the subject matter of claims 1-31 and 99, was not disclosed in Narwankar's '928 provisional application filed on December 30, 1999. Accordingly, the earliest effective date of the Narwankar reference in regards to the subject matter of claims 1-31 and 99, then becomes December 21, 2000. Since the instant application was filed on June 6, 2000, Narwankar is not prior art against the present application.

The Office Action states that in regards to claims 1, 23, and 99, Narwankar discloses a bottom conducting layer 605, a dielectric layer 606, a top conducting layer 608, and annealing the entire top conducting layer 608 comprising an oxygen permeable material, which results in an oxidized gas annealed top layer 610 (pgs. 2-3). In support of this assertion, the Office Action cites Narwankar's Table 1 and FIG. 6e.

Table 1 and FIG. 6e, however, were not in the '928 provisional application, filed on December 30, 1999. In fact, there is no disclosure in the '928 provisional application of any layers 605, 606, 608, or 610. Therefore, since Narwankar is not entitled to the '928 provisional application filing date for the subject matter on which to reject Applicants' claims, it is not prior art to the subject matter of claims 1-31 and 99, and all rejections based thereon should be withdrawn.

Further, the Office Action asserts that as to claim 4, Narwankar discloses "bottom layer 605 is formed from a noble metal/metal alloy such as Ru, Pt, Ru, TiN, Ta<sub>2</sub>O<sub>5</sub>," and cites Table 1 for support. As indicated above, Table 1 was not in the '928 provisional application. Accordingly, Narwankar is not prior art to the subject matter of claim 4.

The Office Action asserts that as to claims 5-8 and 17-28, Narwankar discloses "bottom conducting layer 605 is formed of a conducting metal oxide, metal nitride," and cites Table 1 for support. Table 1 was not in the '928 provisional application. Accordingly, Narwankar is not prior art to the subject matter of claims 5-8 and 17-28.

The Office Action asserts that as to claim 9, Narwankar discloses "the bottom layer is on top of the oxygen barrier 606," and cites FIG. 6e as support. FIG. 6e was also not in the '928 provisional application. Accordingly, Narwankar is not prior art to the subject matter of claim 9.

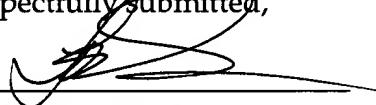
The Office Action asserts that as to claim 16, Narwankar discloses "the top conducting layer 615 may be formed of a non-oxidizing metal permeable to oxygen," and cites Table 1 for support. Table 1 was not in the '928 provisional application. Accordingly, Narwankar is not prior art to the subject matter of claim 16.

In addition, the Title of the Invention has been amended to be more descriptive of the pending claims. No new matter has been added. The Examiner's approval is respectfully solicited.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

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